In the United States Court of Federal Claims

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MARK J. WATSON, ***pro se*****,**	*	
Plaintiff,	*	
v.	*	No. 06-716C
THE UNITED STATES,	*	(Filed Jan. 26, 2007)
Defendant.	*	

* *

MEMORANDUM OPINION AND ORDER

This case is before the court following briefing on Defendant's Motion To Dismiss. Plaintiff filed his complaint on October 16, 2006, alleging that the Employment Standards Administration Wage and Hour Division of the United States Department of Labor wrongfully failed to investigate and adjudicate claims that plaintiff filed with the agency. Defendant contends that the United States Court of Federal Claims does not have jurisdiction to review decisions of the Department of Labor's Wage and Hour Division Administrator or the Administrative Review Board, nor does the court have jurisdiction to grant relief for claims arising under the Immigration and Naturalization Act relating to the H-1B Visa program.

BACKGROUND

On October 16, 2006, plaintiff filed his Original Complaint of Failure To Adjudicate Claim, accompanied by an Application To Proceed *in Forma Pauperis*. Pursuant to RCFC 12(b)(1), defendant filed its dispositive motion on November 29, 2006. Plaintiff responded by filing two motions on December 6, 2006—plaintiff's Original Motion To Strike Defendant's Motion To Dismiss and plaintiff's Original Motion for Judgment on the Administrative Record. By order entered December 12, 2006, the court treated both of plaintiff's motions as oppositions to Defendant's Motion To Dismiss. See Order entered Dec. 12, 2006, ¶¶ 1–2. On December 19, 2006, defendant filed its reply to plaintiff's opposition.

Plaintiff has also filed a request to transfer the case to the ECF System, the court's system for electronic filing. See Pl.'s Br. filed Oct. 16, 2006. Pursuant to General Order No. 42A, an "'ECF Filing User' means a member of the court's bar to whom the court has issued a log-in and password to file documents electronically using the ECF System." General Order No. 42A entered Nov. 4, 2004, at 1. At this time, only "[a]n attorney admitted to the bar of this court may register as a[n] [ECF] Filing User." Id. at 2. Accordingly, plaintiff's motion is denied.

FACTS

Unless otherwise indicated, the following facts are derived from the complaint. This case arises out of a complaint which Mark J. Watson ("plaintiff") filed with the Administrator of the Wage and Hour Division ("WHD") of the Employment Standards Administration of the United States Department of Labor (the "Administrator") against International Business Machines Corporation ("IBM"). 1/ Compl. at 3; Watson v. International Business Machines (IBM) Corp., No. 2006-LCA-31, 1 (Oct. 3, 2006). In his complaint to the Administrator, plaintiff sought to have the Government initiate an enforcement proceeding against IBM for noncompliance with the Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C.) (the "INA").

One of the pursposes of the INA is to define the circumstances under which different classes of aliens may enter the United States under various types of visas. See, e.g., 8 U.S.C.

1/ Defendant states that plaintiff is challenging the decision by the Department of Labor not to investigate plaintiff's claims against three companies: International Business Machines Corporation ("IBM"), Bank of America, and Electronic Data Systems Corporation ("EDS"). While the court appreciates defendant's explication of the jurisdictional facts surrounding plaintiff's claims, it cannot fairly read plaintiff's complaint to be challenging the decisions by the Department of Labor for all three companies. Admittedly, plaintiff states that "my original complaint to the Administrator was filed on **Friday, May 30, 2003**," referring apparently to his complaint that was filed against EDS and which the Administrator denied subsequently December 3, 2003. Compl. at 6; see Watson v. Electric Data Systems Corp. No. 2004-LCA-9, at 1. However, plaintiff only names IBM in his complaint and subsequent briefs. Moreover, the extensive documentation attached to plaintiff's briefs is associated only with plaintiff's claims against IBM. See, e.g., Pl.'s Br. filed Dec. 6, 2006. Accordingly, the court interprets plaintiff's complaint as only challenging decisions relating to IBM.

§ 1101(a)(15)(H)(i)(b). Under the INA, employers are allowed to temporarily hire aliens to engage in speciality occupations; this category of aliens is commonly known as "H-1B" workers. See 8 U.S.C. § 1101(a)(15)(H)(i)(b). Employers that choose to employ H-1B workers must file a Labor Condition Application ("LCA") with the Department of Labor. See 8 U.S.C.A. § 1182(n)(1). The INA requires an employer's LCA to certify, among other things, that the employer (1) will pay H-1B workers the "prevailing wage" or "actual wage level paid by the employer to all other individuals with similar experience and qualifications," whichever is higher; (2) is not engaged in a labor dispute, such as a strike or lockout, in the place of employment; and (3) has provided public notice to employees of its intent to hire H-1B workers. Id. "H-1B dependent employers" 2/ and "willful violators" 3/ are subject to additional obligations: Such employers must attest to the displacement and recruiting of American workers as required by 20 C.F.R. §§ 655.738, 655.739 (2006).

Pursuant to the INA, the Secretary of Labor has established a process "for the receipt, investigation, and disposition of complaints" regarding an employer's failure to meet a condition of 8 U.S.C.A. § 1182 in its LCA or misrepresentation of a material fact. 8 U.S.C.

2/ "H-1B dependent employers" are employers that meet one of the standards described in 20 C.F.R. § 655.736(a)(1), "which are based on the ratio between the employer's total work force employed in the U.S. . . . and the employer's H-1B nonimmigrant employees." 20 C.F.R. § 655.736(a)(1).

3/ A "willful violator" or "willful violator employer" is

> an employer that meets all of the following standards . . .--
>
> (i) A finding of violation by the employer (as described in paragraph (f)(1)(ii)) is entered in either of the following two types of enforcement proceeding:
>
> (A) A Department of Labor proceeding under section 212(n)(2) of the Act (8 U.S.C. 1182(n)(2)(C) and subpart I of this part; or
>
> (B) A Department of Justice proceeding under section 212(n)(5) of the Act (8 U.S.C. 1182(n)(5).
>
> (ii) The agency finds that the employer has committed either a willful failure or a misrepresentation of a material fact during the five-year period preceding the filing of the LCA; and
>
> (iii) The agency's finding is entered on or after October 21, 1998.

20 C.F.R. § 655.736(f)(1).

§ 1182(n)(2)(A)-(B); see 20 C.F.R. § 655.806 (2006) (setting forth procedure for filing and processing of complaint). The Secretary of Labor only must conduct an investigation into a complaint if it first has been determined that a "reasonable basis exists" to believe that the employer made a material misrepresentation or otherwise failed to comply with the law in filing its LCA. 8 U.S.C. § 1182(n)(2)(A); 20 C.F.R. § 655.806(a)(2).

According to his complaint, plaintiff applied for a number of positions with IBM in the Dallas, TX area between August 2002 and August 2003. Compl. at 9. After plaintiff interviewed for the position of "Senior Consultant" at IBM in November 2002, he was informed that the position would not be available until the following year. When the position was re-posted, plaintiff reapplied. Following these events, plaintiff filed a complaint with the WHD. On August 17, 2006, the Administrator declined to investigate plaintiff's complaint against IBM because IBM "is not an H-1B dependent employer or a willful violator; and therefore not subject to the requirements that [plaintiff] alleged [IBM] violated." Watson, No. 2006-LCA-31 at 1. Following this determination, plaintiff sought reversal of the Administrator's determination by an Administrative Law Judge (the "ALJ"). Id. On October 3, 2006, the ALJ dismissed plaintiff's complaint finding that

> there is no genuine issue of fact that on 17 Aug 06, the Administrator determined, based on the information provided by [plaintiff] in his complaint, that an investigation was not warranted and that none was conducted. Indeed, [plaintiff] concedes in his argument that no investigation was conducted.
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> . . . .
>
> [T]his case clearly falls within the ruling of the Administrative Review Board in two previous cases in which [plaintiff] was also a party, *Watson v. Electronic Data Systems Corporation* and *Watson v. Bank of America*. I am bound to follow that precedent. Without an investigation by the Administrator, I have no jurisdiction to hear the case or review the decision of the Administrator that an investigation was not warranted.

Id. at 4.

On October 20, 2006, the Administrative Review Board declined to review the ALJ's decision. Plaintiff filed his complaint in the Court of Federal Claims on October 16, 2006, seeking extensive relief, including, *inter alia*, (1) a reversal of the Administrator's determination not to investigate and adjudicate his claims; (2) a determination that IBM committed immigration benefits fraud and an order directing "that formal criminal charges be filed with the Office of Inspector General, Criminal Investigation Division;" (3) "punitive and compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, [and] loss of enjoyment of life;" (4) an order from the court

directing the Government to employ plaintiff "with front pay escalated an[n]ually for inflation and accrued interest;" and (5) "relocation and safe harbor (a.k.a. refugee) expenses." Compl. filed Oct. 16, 2006, at 8–9.

Defendant seeks dismissal because plaintiff's claims are "not founded upon a contract with the United States or a 'money mandating' constitutional, statutory, or regulatory provision of law." Def.'s Br. filed Nov. 29, 2006, at 7. Defendant also challenges the merits of plaintiff's Fifth Amendment takings claim, raised in its responsive brief, because plaintiff does not possess a private property interest that was taken by the Federal Government for public use.

DISCUSSION

1. Standard of review

Complaints filed by *pro se* litigants are held "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam). A court should be "receptive to *pro se* plaintiffs and assist them." Demes v. United States, 52 Fed. Cl. 365, 369 (2002); see Ruderer v. United States, 412 F.2d 1285, 1292 (Ct. Cl. 1969).

Pro se litigants are granted the greatest latitude regarding motions to dismiss for failure to state a claim upon which relief can be granted. Courts have "strained [their] proper role in adversary proceedings to the limit, searching [the record] to see if plaintiff has a cause of action somewhere displayed." Ruderer, 412 F.2d at 1292. Nevertheless, while "[t]he fact that [a plaintiff] acted *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be." Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). Although plaintiff is given some leniency in presenting his case, his *pro se* status does not render him immune from pleading facts upon which a valid claim can rest. See, e.g., Ledford v. United States, 297 F.3d 1378, 1382 (Fed. Cir. 2002) (affirming dismissal of *pro se* plaintiff's complaint which sought, *inter alia*, a tax refund); Constant v. United States, 929 F.2d 654, 658 (Fed. Cir. 1991) (sanctioning *pro se* plaintiff for filing frivolous appeal). As this court stated in Demes, "[w]hile a court should be receptive to *pro se* plaintiffs and assist them, justice is ill-served when a jurist crosses the line from a finder of fact to advocate." 52 Fed. Cl. at 369.

By contrast, *pro se* status grants less leeway when it comes to meeting jurisdictional requirements. Bernard v. United States, 59 Fed. Cl. 497, 499 (2004) (holding that latitude afforded to *pro se* plaintiffs "does not relieve a *pro se* plaintiff from meeting jurisdictional requirements"), aff'd, 98 Fed. Appx. 860 (Fed. Cir. 2004) (unpubl. table); see also Ledford,

297 F.3d 1378, 1382 (Fed. Cir. 2002) (affirming dismissal of *pro se* plaintiff's complaint seeking unpaid tax refund). This is certainly the case when plaintiff attempts to invoke the jurisdiction of the Court of Federal Claims, for the Tucker Act "confers jurisdiction upon the Court of Federal Claims over the specified categories of actions brought against the United States, and . . . waives the Government's sovereign immunity for those actions." Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc). Consequently, the Tucker Act must be construed strictly in favor of the Government. See Dep't of the Army v. Blue Fox, Inc., 525 U.S. 255, 261 (1999); Shoshone Indian Tribe v. United States, 364 F.3d 1339, 1346 (Fed. Cir. 2004). As the requirements of subject matter jurisdiction are so "exacting[,] . . . . [a] party's failure or inability to procure counsel therefore does not alter who carries the burden nor how that burden is met." Carter v. United States, 62 Fed. Cl. 66, 69 (2004).

2. Subject matter jurisdiction

Jurisdiction must be established before the court may proceed to the merits of a case. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 88-89 (1998). Any party may challenge, or the court may raise *sua sponte* subject matter jurisdiction at any point in a proceeding, even upon appeal. Arbaugh v. Y&H Corp., 126 S. Ct. 1235, 1240 (2006). Once the court's subject matter jurisdiction is put into question, it is "incumbent upon [the plaintiff] to come forward with evidence establishing the court's jurisdiction. [The plaintiff] bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence." Reynolds, 846 F.2d at 748; McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Myers Investigative & Sec. Servs., Inc. v. United States, 275 F.3d 1366, 1369 (Fed. Cir. 2002).

Federal courts are presumed to lack jurisdiction unless the record affirmatively indicates the opposite. Renne v. Geary, 501 U.S. 312, 316 (1991). When a federal court hears a jurisdictional challenge, "its task is necessarily a limited one." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Id. The court must accept as true the facts alleged in the complaint, and must construe such facts in the light most favorable to the pleader. See Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995) (holding that courts are obligated "to draw all reasonable inferences in plaintiff's favor"); Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 747 (Fed. Cir. 1988).

The Tucker Act defines the jurisdictional reach of the Court of Federal Claims. See 28 U.S.C. § 1491(a)(1) (2000). It "confers jurisdiction upon the Court of Federal Claims over the specified categories of actions brought against the United States, and . . . waives the Government's sovereign immunity for those actions." Fisher v. United States, 402 F.3d

1167, 1172 (Fed. Cir. 2005) (en banc); see also Emery Worldwide Airlines, Inc. v. United States, 49 Fed. Cl. 211, 220 (2001) (finding United States Postal Service to be "federal agency" within meaning of Administrative Disputes Resolution Act, and, thus, jurisdiction over it exists under Tucker Act), aff'd, 264 F.3d 1071, 1080 (Fed. Cir. 2001).

The Court of Federal Claims has "jurisdiction to render judgment upon any claim against the United States founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1); see also Trauma Serv. Group v. United States, 104 F.3d 1321, 1324-25 (Fed. Cir. 1997) ("Jurisdiction based on contract 'extends only to contracts either express or implied in fact, and not to claims on contracts implied in law.'" (quoting Hercules, Inc. v. United States, 516 U.S. 417, 423 (1996))).

In Fisher the United States Court of Appeals for the Federal Circuit sought to clarify Tucker Act jurisprudence, which had blended the questions of the Court of Federal Claims' jurisdictional grant with the merits of the claim. "This mixture has been a source of confusion for litigants and a struggle for courts." 402 F.3d at 1172. As the Federal Circuit elucidated, the Tucker Act does not provide any substantive causes of action. "[I]n order to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages." Id.; see also United States v. Mitchell, 463 U.S. 206, 216 (1983).

The Federal Circuit adopted a single-step approach to addressing whether a constitutional provision, statute, or regulation is money-mandating and, therefore, within the jurisdiction of the Court of Federal Claims.

> When a complaint is filed alleging a Tucker Act claim based on a Constitutional provision, statute, or regulation, . . . the trial court at the outset shall determine, either in response to a motion by the Government or *sua sponte*[,] . . . whether the Constitutional provision, statute, or regulation is one that is money-mandating.
>
> If the court's conclusion is that the Constitutional provision, statute, or regulation meets the money-mandating test, the court shall declare that it has jurisdiction over the cause, and shall then proceed with the case in the normal course. . . .
>
> If the court's conclusion is that the source as alleged and pleaded is not money-mandating, the court shall so declare, and shall dismiss the cause for lack of jurisdiction, a Rule 12(b)(1) dismissal—the absence of a

> money-mandating source being fatal to the court's jurisdiction under the Tucker Act.

Fisher, 402 F.3d at 1173.

Thus, a claim is not beyond the subject matter jurisdiction of the Court of Federal Claims merely because the Government asserts that it never had a contract with the plaintiff. Rather, if the existence of a contract is well-pleaded, the court has jurisdiction to determine, on the merits, if a valid contract actually exists. The difference, while subtle, is substantial.

Plaintiff cites to 28 U.S.C. § 1494 (2000), as a source of jurisdiction. Plaintiff states that the court has jurisdiction over "any unsettled complaint filed with the Administrator contingent three years have elapsed from the date of the initial complaint without settlement (28 U.S.C. 1494)." Compl. at 7. Plaintiff is mistaken. Section 1494 grants the Court of Federal Claims jurisdiction over unsettled accounts of officers, agents, or contractors when (1) the plaintiff "applied to the proper department of the Government for settlement of the account;" (2) "three years have elapsed from the date of such application without settlement;" and (3) "no suit upon the same has been brought by the United States." Id.

In 1930 the United States Court of Claims had occasion to comment on the jurisdictional grant provided for in Section 180 of the Judicial Code, Pub. L. No. 61-475, 36 Stat. 1141 (1911), which is substantively similar to 28 U.S.C. § 1494. Compare Section 180 of the Judicial Code, Pub. L. No. 61-475, 36 Stat. 1141 (1911), with 28 U.S.C.A. § 1494 (2006). In Standard Dredging Co. v. United States, 71 Ct. Cl. 218, 239 (1930), the court stated: "The plain language of the section grants to an officer, agent, or a contractor, or the guarantor, surety, or personal representative of such officer, agent, or contractor the right to come into this court and have the claim of the United States that he is indebted to it determined." Id.; see also Gerding v. United States, 26 Ct. Cl. 319, 322 ("The object of the section of the statute, [24 Stat. 505 (1887)] . . . is to bring to a speedy and final settlement claims upon the part of the Government which in the absence of any right upon the part of claimants, . . . might remain dormant in the Department for years and then be prosecuted, to the great prejudice and disadvantage of both principals and sureties.").

Section 1494 does not provide this court with jurisdiction over plaintiff's claims because plaintiff has failed to meet the statute's requirements. First, plaintiff is not an officer, agent, or contractor of the United States. Moreover, plaintiff has not shown that he has an "unsettled account;" rather, he has alleged that he has filed a complaint with the Department of Labor that was not resolved to his satisfaction. Finally, plaintiff has not demonstrated that an account has remained unsettled for a period of more than three years. Moreover, though plaintiff claims that the court has jurisdiction under 28 U.S.C. § 1494, he

ignores applicable regulations that deny review of his complaint. The Administrator determined that an investigation into plaintiff's complaint was not warranted because IBM was neither an H-1B dependent employer nor a willful violator and, therefore, was not subject to the requirements that plaintiff alleged IBM violated. When an Administrator determines that a complaint "fails to present reasonable cause for an investigation," his decision is unreviewable. 20 C.F.R. § 655.806(a)(2). There is neither a hearing nor an appeal available, although a complainant may submit a new complaint. Id. In this case, the Administrator went so far as to invite plaintiff to file additional information that might demonstrate that an investigation was warranted, although, plaintiff did not respond. Watson, No. 2006-LCA-31 at 1.

3. Takings claim

Plaintiff's Original Motion To Strike Defendant's Motion To Dismiss argues that the Court of Federal Claims has jurisdiction over his case because it

> involves a taking [28 U.S.C. 1491(a)] by the ETA Alien Labor Certification Officer (CO) of my job and job opportunities via certified Labor Condition Applications (LCAs) [a.k.a. Alien labor certifications obtained pursuant to 8 U.S.C. 1182(a)(5)(A)] and the subsequent failure of the ESA Wage & Hour Division (Administrator) to adjudicate my claims for just compensation (28 U.S.C. 1494).

Pl.'s Br. filed Dec. 6, 2006, at 3. Assuming that plaintiff intended to invoke the Fifth Amendment of the United States Constitution, defendant argues that plaintiff has not plead an actionable taking. Defendant is correct that plaintiff has failed to state a claim upon which relief can be granted pursuant to RCFC 12(b)(6).

The Fifth Amendment provides, in pertinent part: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. In addition to taking property by physical occupation or invasion, a taking may occur where the Government regulates private property. Penn. Coal Co. v. Mahon, 260 U.S. 393, 415 (1922). Although the Government certainly may regulate property, "if regulation goes 'too far' it will constitute a compensable taking." M & J Coal Co. v. United States, 47 F.3d 1148, 1153 (Fed. Cir. 1995) (quoting Penn. Coal, 260 U.S. at 415). Limitations are placed on the Government's regulation of private property flowing from the recognition that, if "subject to unbridled, uncompensated qualification under the police power, 'the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed].'" Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1014 (1992) (alterations in original) (quoting Penn. Coal, 200 U.S. at 415).

Assuming that a claim is ripe, the court must determine if the regulation goes too far by making a "'two-tiered' inquiry into the government act alleged to have constituted a taking." Chancellor Manor v. United States, 331 F.3d 891, 901 (Fed. Cir. 2003). First, the court must consider "the nature of the interest allegedly taken to determine whether a compensable property interest exists." Chancellor, 331 F.3d at 901; see M & J Coal, 47 F.3d at 1154 (analyzing whether "interest was a 'stick in the bundle of property rights' acquired by the owner"). If a plaintiff is unable to prove that he held a protected property interest, his takings claim will fail. Wyatt v. United States, 271 F.3d 1090, 1096 (Fed. Cir. 2001) (holding that "only persons with a valid property interest at the time of the taking are entitled to compensation"). If plaintiff succeeds in meeting the first element, the court then must determine whether the Government's action "constitutes a compensable taking of that interest for a public purpose." Chancellor, 331 F.3d at 902; see also M & J Coal, 47 F.3d at 1153-54.

The holding in American Pelagic Fishing Co. v. United States, 379 F.3d 1363 (Fed. Cir. 2004), requires plaintiff to possess a private property interest in order to be eligible for compensation under the Fifth Amendment. Members of the Peanut Quota Holders Ass'n v. United States, 421 F.3d 1323 (Fed. Cir. 2005), stands for the proposition that property compensable under the takings clause must possess certain indicia of private property, including the ability to transfer and the ability to exclude others from use or enjoyment of that property. In Peanut Quota Holders, the Federal Circuit held that "the decisions by both the Supreme Court and this court imply that a compensable interest is indicated by the absence of express statutory language precluding the formation of a property right in combination with the presence of the right to transfer and the right to exclude." Id. at 1331. Thus, plaintiff is required to demonstrate a right to transfer and to exclude in order to present a valid compensable property interest.

Plaintiff has failed to allege that he possessed such private property interest. He never possessed the authority to transfer or exclude others from use or enjoyment of a potential position with IBM. Because plaintiff fails to meet the first prong of the takings inquiry, the court need not address the second prong.

Finally, plaintiff has vigorously pursued his claim against IBM, which has resulted in at least two written opinions entered previously. See Watson v. International Business Machines (IBM) Corp., No. 2006-LCA-31; Watson v. International Business Machines Corp., ARB No. 07-009 (Oct. 20, 2006). Plaintiff's persistent filings in the face of clear legal authority that preempts judicial review strains judicial resources. Recognizing that plaintiff is proceeding *pro se*, Administrative Law Judge Patrick M. Rowenow explained the applicable legal standards in his October 3, 2006 written decision and order: "The Administrator's determination that an investigation is not warranted is not subject to review by an administrative law judge." Watson, No. 2006-LCA-31 at 4. Further, the ALJ found

that "this case clearly falls within the ruling of the Administrative Review Board in two previous cases in which Complainant was also a party, *Watson v. Electronic Data Systems Corporation* and *Watson v. Bank of America*. I am bound to follow that precedent." Id.

Plaintiff has filed similar complaints against the Bank of America and his former employer, Electronic Data Systems Corporation ("EDS"). Watson v. Electronic Data Systems Corporation, 2004-LCA-9 (Dec. 29, 2003); Watson v. Bank of America, 2004-LCA-23 (Apr. 12, 2004). As in the case at bar, plaintiff alleged that the Bank of America and EDS "conspired with federal agencies to hire more 'H-1B' nonimmigrant workers." Watson v. Bank of America, No. 05-10797, slip op. at 1 (5th Cir. Aug. 28, 2006). Plaintiff has exhausted the administrative and judicial forums available to him, having filed complaints or appeals in front of the Administrative Review Board, the United States District Court for the Northern District of Texas, and the Fifth Circuit Court of Appeals. See, e.g., id.; Watson v. Electronic Data Systems Corp., ARB Nos. 04-023, 029, 050 (May 31, 2005); Watson v. Bank of America, ARB No. 04-099 (May 31, 2005); Watson v. Electronic Data Systems Corp. No. 04-2291, 2005 U.S. Dist. LEXIS 11534 (June 14, 2005).

The court has taken into consideration that plaintiff is *pro se* and "that allowances can be made for a lack of understanding of proper legal procedures, but this is not 'unrestrained license to pursue totally frivolous appeals.'" Bergman v. Dep't of Commerce, 3 F.3d 432 (1993) (citing Simmons v. Poppell, 837 F.2d 1243, 1244 (5th Cir. 1988)). Although filing multiple claims with little factual support in multiple courts "which have no hope of succeeding place[s] an unnecessary and intolerable burden on judicial resources," McEnery v. Merit Sys. Protection Bd., 963 F.2d 1512, 1516 (Fed. Cir. 1992), the Court of Federal Claims is not burdened unduly. However, because the real abuse falls upon the Department of Justice, charged with filing briefs to point out the obvious lack of jurisdiction or meritless claims, the court notes that plaintiff is taking advantage of the judicial system. Accordingly, based on the foregoing,

IT IS ORDERED, as follows:

1. Plaintiff's Motion To Proceed *in Forma Pauperis* is granted.

2. Plaintiff's Original Request To Transfer Case to ECF is denied.

3. Defendant's motion to dismiss is granted. The Clerk of the Court shall dismiss plaintiff's complaint without prejudice for lack of subject matter jurisdiction for all claims stated in Compl. at 7 and for failure to state a claim for which relief can be granted with respect to plaintiff's taking claims. See Pl.'s Br. filed Dec. 6, 2006, at 3.

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Christine Odell Cook Miller
Judge